

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

MICHAEL LAURENSEN (SBN: 190023)
JOSHUA B. WAGNER (SBN: 199570)
GORDON & REES LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

m Laurenson@gordonrees.com
jwagner@gordonrees.com

Attorneys for Defendants
NUANCE COMMUNICATIONS, INC.,
PAUL RICCI
JEANNE NAUMAN
CATHERINE DORCHUCK
DIANE COFFEY
MATTHEW LIPTAK
JOHN HAGEN and
RICHARD NARDONE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISHNA REDDY,

Plaintiff,

vs.

NUANCE COMMUNICATIONS, INC.;
FOCUS INFOMATICS, INC.; PAUL
RICCI; JEANNE NAUMAN; CATHERINE
DORCHUCK; RICHARD NARDONE;
JOHN HAGEN; MATTHEW LIPTAK;
DIANE COFFEY; and DOES 1 through 100,
inclusive, with the individual named
defendants being sued both individually and
also as the agents of the defendants FOCUS
INFOMATICS, INC. and NUANCE
COMMUNICATIONS, INC.

Defendants.

CASE NO. CV 11-05632(PSG)

NOTICE OF MOTION AND
MOTION TO SET ASIDE
DEFAULT;

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF [FRCP
55(c)];

DECLARATION OF JOSHUA
B. WAGNER

Date: April 24, 2012
Time: 10:00 a.m.

TO PLAINTIFF KRISHNA REDDY PROCEEDING *PRO SE*:

PLEASE TAKE NOTICE that on April 24, 2012 at 10:00 a.m., or as soon thereafter as this matter may be heard in the Courtroom of the Honorable Paul S. Grewal of the United States District Court for the Northern District of California, located at 280 South 1st Street, Courtroom 5, 4th Floor, San Jose, CA 95113, the Honorable Magistrate Judge Paul Singh Grewal presiding, Defendants, PAUL RICCI; JEANNE NAUMAN; CATHERINE DORCHUCK; DIANE COFFEY, MATTHEW LIPTAK, JOHN HAGEN and RICHARD NARDONE (hereinafter referred to as the "Individual Defendants") hereby move the Court for an order setting aside the Default entered by the Clerk on February 9, 2012.

Pursuant to Rule 55(c) of the Federal Rules of Civil Procedure, good cause exists to grant the relief sought as the default was entered based on improper service of process. Further good cause exists as due to the improper service, Plaintiff has not successfully invoked personal jurisdiction as to these Individual Defendants. Further, there will be no prejudice to Plaintiff if the relief is granted, and the Individual Defendants have good and meritorious defenses to the alleged claims for relief.

This Motion will be based on this Notice, the accompanying Memorandum of Points and Authorities, the records and pleadings on file in this action, and upon such further evidence, either oral or documentary, as this Court will consider at the hearing on this Motion.

Defendants request oral argument at the motion hearing.

Dated: March 7, 2012

GORDON & REES LLP

By: /s/ Joshua B. Wagner

Michael Laurenson

Joshua B. Wagner

Attorneys for Defendants

Nuance Communications, Inc. Paul Ricci,
Jeanne Nauman, Catherine Dorchuck, Diane
Coffey, Matthew Liptak, John Hagen And
Richard Nardone

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants Paul Ricci; Jeanne Nauman; Catherine Dorchuck; Diane Coffey, Matthew Liptak, John Hagen and Richard Nardone (hereinafter referred to as “Individual Defendants”) respectfully request that this Court set aside the Clerk’s entry of Default filed on February 9, 2012. Good cause exists as default was entered based on Plaintiff’s improper attempt to effectuate service against Defendants. Plaintiff has not effected service sufficient to establish personal jurisdiction over Defendants. Further, no prejudice will result to Plaintiff as this is early in the action, and Defendants have good and meritorious defenses to the claims for relief.

II. RELEVANT FACTS

On November 21, 2011, Plaintiff Krishna Reddy (“Plaintiff”), proceeding in *pro se*, filed suit against her former employer, Nuance Communications, Inc., and Defendants, alleging: (1) Discriminatory Employment Practices, Harassment and Hostile Working Environment; (2) Tortious Wrongful Termination in Violation of Public Policy; (3) Breach of Contract; (4) Breach of the Covenant of Good Faith and Fair Dealing; (5) Promissory Estoppel; (6) Fraud, Deceit, and Civil Conspiracy; (7) Intentional and Negligent Interference with Contract and Prospective Economic Advantage; (8) Violation of California Labor Code Section 1050 and 1052; (9) Intentional and Negligent Infliction of Emotional Distress; and (10) Unconstitutional Off-shoring of Confidential Medical Information of the Citizens of the United States. In addition to injunctive relief, Plaintiff’s prayer seeks thirty-one billion dollars in compensatory and punitive damages.

According to Plaintiff, her attempted service on the Defendants was made by leaving a copy of the summons and Complaint with Ms. Nancy Newark, Legal Counsel – Employment, at Nuance Communications, Inc., at 1 Wayside Road, Burlington, Massachusetts 01803 and sending a duplicate copy of the summons

1 and Complaint via certified mail to that address. See Docket No.: 25; Declaration
2 of Krishna Reddy in Support of Request to Enter Default (“Reddy Decl.”), ¶ 5;
3 Also see Docket 26-34.)

4 On January 5, 2012, Plaintiff advised counsel for Nuance and Defendants
5 that she had accomplished service on December 30, 2012. (Declaration of Joshua
6 B. Wagner (“Wagner Decl.”), ¶ 2; Exhibit 1.) That same date, counsel for
7 Defendants requested that Plaintiff provide the proof of service. (Wagner Decl., ¶
8 3; Exhibit 2.) The following day, counsel for Defendants was able to review the
9 documents that Plaintiff indicated constituted service, and determined that service
10 had not been validly accomplished. (Wagner Decl., ¶ 4; Exhibit 3.) On January 6,
11 2012, counsel for Defendants sent a courtesy email to Plaintiff advising her of the
12 defective service. (Wagner Decl., ¶ 5; Exhibit 4.)

13 On February 3, 2012, Plaintiff filed the proofs of service with respect to
14 Defendants. (See Docket Nos.: 26-34.) That same day, Plaintiff filed a Request
15 with the Clerk to Enter Default against Defendants (Docket No.: 25.) Notably, the
16 Request for Entry of Default filed with the Clerk stated that each of the Defendants
17 had been served with summons, and that the time allowed by law for responding
18 had expired; and that each Defendant had failed to file a pleading or motion
19 permitted by law; and that none of the Defendants were minors or incompetent.
20 (Reddy Decl: ¶¶ 3-9.) On February 9, 2012, the Court Clerk entered default as to
21 all Defendants, except Ms. Coffey. (Docket No.: 37.)

22 On February 14, 2012, Defendants filed an Objection as to the defective
23 service of process and corresponding lack of jurisdiction with the Court. (Docket
24 No.: 39.) Defendants objection was predicated on (1) use of substitute service
25 without any attempt at personal service; and (2) the mailing to a Massachusetts
26 address which in no way could be construed as any Defendants usual place of
27 business.

1 In response, on February 22, 2012, Plaintiff filed a Reply to Defendants
2 Objection. (Docket No.: 50.) Notably, Plaintiff conceded that no attempt at
3 personal service was made, and instead argued that service by mail was adequate.

4 **III. CLERK'S ENTRY OF DEFAULT SHOULD BE SET ASIDE AS**
5 **PLAINTIFF HAS NOT PROPERLY SERVED DEFENDANTS**

6 A trial court has broad discretion and significant procedural flexibility to set
7 aside a clerk's entry of default. *Brady v. United States*, 211 F. 3d 499, 504 (Ninth
8 Cir. 2000) ("court's discretion is especially broad when...it is entry of default that
9 is being set aside rather than default judgment."). Rule 55(c) provides that a Court
10 may set aside an entry of default for "good cause" shown. Fed. R. Civ. Proc.
11 55(c). Here, good cause exists (1) as the default was entered based on improper
12 service of process; as Plaintiff has not successfully invoked personal jurisdiction as
13 to Defendants. Further, there will be no prejudice to Plaintiff if the relief is
14 granted, and Defendants have good and meritorious defenses to the alleged claims
15 for relief.

16 A motion for relief from default may be granted where defendant (even if he
17 or she had actual notice) demonstrates defects in the service of process. *Carimi v.*
18 *Royal Caribbean Cruise Line, Inc.*, 959 F. 2d 1344, 1345 (5th Cir. 1992); see *SEC*
19 *v. Internet Solutions for Business Inc.*, 509 F. 3d 1161, 1165-1166 (9th Cir. 2007).
20 Plaintiff, as the party invoking the court's jurisdiction, has the burden of proving
21 the existence of personal jurisdiction in opposition to defendant's motion to set
22 aside a default judgment. *Thomas P. Gonzalez Corp. v. Consejo Nacional De*
23 *Produccion De Costa Rica*, 614 F. 2d 1247, 1256 (9th Cir. 1980). This is so
24 because an *in personam* judgment entered without personal jurisdiction over a
25 defendant is void as to that defendant." *Oldfield v. Pueblo De Bahia Lora, S.A.*,
26 558 F. 3d 1210, 1217 (11th Cir. 2009); *Combs v. Nick Garin Trucking*, 825 F. 2d
27 437, 442 (DC Cir. 1987).

28 **A. Plaintiff's Has Not Satisfied Federal Requirements for Service**

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 A federal court does not have jurisdiction over a defendant unless the
2 defendant has been served properly [with the summons and complaint] under
3 Federal Rule of Civil Procedure rule 4. Without substantial compliance with Rule
4 4 'neither actual notice nor simply naming the defendant in the complaint will
5 provide personal jurisdiction.' *Direct Mail Specialists, Inc. v. Eclat Computerized*
6 *Technologies*, 840 F.2d 685, 687 (9th Cir. 1988) (citing *Benny v. Pipes*, 799 F.2d
7 489, 492 (9th Cir. 1986), cert. denied, 484 U.S. 870, 108 S. Ct. 198, 98 L. Ed. 2d
8 149 (1987).

9 Rules 4(d) and (e) provide that service of process of the summons and
10 complaint may be made: (1) by mailing a copy of the summons and complaint to
11 the individual defendant with a notice and request for waiver; (2) pursuant to state
12 law; (3) by delivering a copy of the summons and complaint to the individual
13 defendant personally; (4) by leaving a copy of the summons and complaint at the
14 individual defendant's dwelling house or usual place of abode with some person of
15 suitable age and discretion then residing therein; or (5) by delivering a copy of the
16 summons and complaint to an agent authorized by appointment or by law to
17 receive service of process.

18 According to Plaintiff, she attempted service under California law pursuant
19 to Federal Rule of Civil Procedure Rule 4(e)(1). (See Docket No. 50: Reply to
20 Objection, p.4:9-12.) However, this appears to be a misstatement as Rule 4(e)(1),
21 does not authorize service under California law, but instead requires that a party
22 attempting service mail a copy of the summons and complaint to the individual
23 defendant with a notice and request for waiver. Although presumably Plaintiff will
24 argue that she did mail a copy of the summons and complaint, it cannot be disputed
25 that Plaintiff failed to include a request for waiver as required by Rule 4(e)(1).
26 Accordingly, service was not accomplished as per Rule 4(e)(1).

27 ///

28 ///

B. Plaintiff's Has Not Satisfied California Requirements for Accomplishing Service.

Given Plaintiff's reference to California law, it is more likely that she intended to accomplish service under Rule 4(e)(2), pursuant to state law, in this case California law. This is borne out by Plaintiff reference to the California Code of Civil Procedure. (See Docket No. 50: Reply to Objection p.4: 23-27.) Plaintiff invokes California Code of Civil Procedure sections 415.20 and 415.40.

As a threshold matter, under California law, Plaintiff has an obligation to exercise diligence in determining each Individual Defendants' status and address. *Kott v. Superior Court*, 45 Cal. App. 4th 1126, 1131-1133 (1996). Here, Plaintiff has not shown that she has made any efforts to locate the Individual Defendants, has not determined whether they are current or former employees of Nuance, and simply blindly attempted service by delivery and mailing to an address in Burlington, Massachusetts, a location with no apparent connection to any of the Individual Defendants, or the facts in this action, except that it is the corporate headquarters of Plaintiff's former employer.

1. Service Ineffective Under California Civil Procedure § 415.20

Under California Code of Civil Procedure section 415.20, substituted service may be made in California by leaving a copy of the summons and complaint at the individual defendant's office, dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box." However, Plaintiff has introduced no evidence that the address of Nuance's offices in Burlington, Massachusetts is any Individual Defendants "usual" place of abode, business, or mailing address. Accordingly, Plaintiff's efforts under 415.20 necessarily fail. See *Bonita Packing Co. v. O'Sullivan*, 165 F.R.D. 610, 613 (C.D. Cal. 1995); *Blundell v. County of L.A.*, 2009 U.S. Dist. LEXIS 71918, 9-12 (C.D. Cal. Aug 12, 2009).

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

Second, California law under section 415.20 requires that a Plaintiff exercise due diligence in attempting personal service prior to resorting to substitute service. All means other than personal delivery to the defendant are considered substituted service, and personal service must have been diligently attempted before substituted service may be performed. "Ordinarily, . . . two or three attempts at personal service at a proper place should fully satisfy the requirement of reasonable diligence and allow substituted service to be made." *Bein v. Brechtel-Jochim Group, Inc.*, 6 Cal. App. 4th 1387, 1390 (1992) (citing *Espindola v. Nunez*, 199 Cal. App. 3d 1389, 1392, (1988)). As noted above, Plaintiff has deliberately avoided undertaking any efforts to attempt personal service. Accordingly, service under section 415.20 fails.

2. Service Ineffective Under California Civil Procedure § 415.40

Under Code of Civil Procedure section 415.40, California allows for service on out-of-state residents by certified mail with return receipt requested. As a threshold matter, Plaintiff simply assumes the Individual Defendants are out-of-state residents, and are thus able to be served pursuant to 415.40. (See Docket No. 50: Reply to Objection, p.4: 22.) Absent evidence that these Individual Defendants are out-of-state residents, Plaintiff can not effectuate service under section 415.40.

Second, and even more fatal to Plaintiff's contention, service under section 415.40 is not satisfactory to establish jurisdiction over an out-of-state resident. Jurisdiction must already be established pursuant to California's long arm statute showing that the party to be served has sufficient minimum contacts with California. *See Cal. Code Civ. Proc* § 410.10; *Rocklin De Mexico, S. A. v. Superior Court*, 157 Cal. App. 3d 91 (Cal.App.3d Dist. 1984). Personal jurisdiction over a corporation does not automatically establish personal jurisdiction over its officers, directors, agents and employees. Each defendant's "contacts" with the forum state must be evaluated separately. *Calder v. Jones*, 465 U.S. 783, 790 (1984); *Mihlon v. Sup.Ct. (Murkey)*, 169 Cal.App.3d 703, 713

(1985). Notably, Plaintiff cannot show that the Individual Defendants have any connection to California, and for that reason, service under 415.40 fails.

IV. CONCLUSION

Plaintiff has a duty to diligently attempt to locate and serve the individuals who she has alleged claims against. See Fed. R. Civ. P. 4(c); also see *Kott v. Superior Court*, 45 Cal. App. 4th 1126, 1131-1133 (1996). It is also Plaintiff's burden to show that service is effective. *Thomas P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F. 2d 1247, 1256 (9th Cir. 1980). Here, Plaintiff has failed to make any effort to locate or serve, and cannot show that service is effective and accordingly, Defendants respectfully request that this Court set aside the clerk's entry of default.

Dated: March 7, 2012

GORDON & REES LLP

By: /s/ Joshua B. Wagner
 Michael Laurensen
 Joshua B. Wagner
 Attorneys for Defendants
 Nuance Communications, Inc., Paul
 Ricci, Catherine Dorchuck, Diane
 Coffey, Jeanne Nauman, John Hagen,
 Matthew Liptak and Richard Nardone

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

DECLARATION OF JOSHUA B. WAGNER

I, JOSHUA B. WAGNER, do hereby declare as follows:

1. I am an attorney at law duly admitted and licensed to practice in the United States District Court for Northern District of California. I am a partner with Gordon & Rees LLP, 633 West Fifth Street, Los Angeles, California 90071, attorneys of record for Defendants Paul Ricci; Jeanne Nauman; Catherine Dorchuck; Diane Coffey, Matthew Liptak, John Hagen and Richard Nardone (hereinafter referred to as "Defendants") in the above-captioned matter. I have personal knowledge of the matters stated herein and, if called as a witness, I could and would testify competently thereto. I submit this declaration in Support of Defendants Motion to Set Aside the Clerk's Entry of Default.

2. On January 5, 2012, by email, Plaintiff advised my office that she had accomplished service on Defendants on December 30, 2012. Attached as Exhibit 1 is a true and correct copy of Plaintiff's January 5, 2012 email correspondence.

3. On January 5, 2012, by email, my office requested that Plaintiff provide the proof of service. Attached as Exhibit 2 is a true and correct copy of that January 5, 2012 email correspondence.

4. On January 6, 2012, my office reviewed the documents that Plaintiff indicated constituted service, and determined that service had not been validly accomplished under either Federal or California requirements.

///

///

///

///

///

///

///

///

1 5. On January 6, 2012, my office sent a courtesy email to Plaintiff advising her
2 of the defective service. Attached as Exhibit 3 is a true and correct copy of that
3 January 6, 2012 email correspondence.

4 I declare under penalty of perjury under the laws of the United States of
5 America and the laws of the state of California that the foregoing is true and
6 correct and that this declaration was executed at Los Angeles, California this 7th
7 day of March, 2012.

8
9 /S/ Josh Wagner

10 JOSHUA B. WAGNER
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

EXHIBIT “1”

Sat Sang Khalsa

From: K. Reddy [acaliforniannuance@gmail.com]
Sent: Thursday, January 05, 2012 2:10 PM
To: Sat Sang Khalsa
Cc: K. Reddy
Subject: Service of Summons and Complaint

Mr. Khalsa,

I noticed a new e-mail from you, but while I was trying to open the attachments you sent, I lost the e-mail; it got deleted. Could you please re-send it? Thank you in advance!

Looked like the e-mail was about "waiver of summons."

As you recall, you called me on 11/23/2011 about the lawsuit and regarding waiver of summons. When inquired about service on Focus Infomatics and the remaining individual defendants, you said you'd get back to me regarding that.

On 12/1/2011, in your e-mail, you said that you were looking into whether you could accept service on behalf of the remaining defendants, but you never got back to me.

On 12/12/2011, I wrote to you regarding "acknowledgment of service", and you said you'd get back to me the next day. But, you never did.

I called your office around 12/23/2011, but could not get hold of you. You never got back to me regarding any acknowledgment of service of process either.

I waited for a total of 37 days to hear from you about acknowledgment of service of process, but never received any response from you.

I was told that the summons and Complaint have been served on all the defendants on 12/30/2011.

It is my understanding that at this point, the issue of "waiver of summons" is moot.

Sincerely,

Krishna Reddy
(760) 962-9959

EXHIBIT “2”

Sat Sang Khalsa

From: Sat Sang Khalsa [skhalsa@gordonrees.com]
Sent: Thursday, January 05, 2012 2:33 PM
To: K. Reddy
Cc: Joshua Wagner; SPTBC-1061948.LEGAL@worksite.gordonrees.com
Subject: RE: Service of Summons and Complaint

Dear Ms. Reddy:

It's a surprise that you managed to permanently delete the message, since most email programs, including gmail, have an undelete feature. Nonetheless, I will resend the email message.

As you will see from the message, there is a further step required to effect a waiver of service, which under FRCP Rule 4 is the Plaintiff's obligation. Since some time has passed since we spoke, and you had yet to send the request for waiver form. As a courtesy, and recognizing your pro se status, we provided you with the appropriate format for the request.

From the outset, I have been clear with you that our firm is presently only representing Defendant Nuance and as per FRCP Rule 4 we are willing to waive service on Nuance's behalf. I have been looking into the status of the other defendants. Also, as to your inability to reach me, as you are aware, we recently concluded a stretch of holidays. I'm sure when you called my office of December 23, you must have listened to the voice messages stating that I was out until December 27. If you had left a message or sent an email, that would have been more effective.

[In any case, if you have effectuated service, I would appreciate your providing a copy of the proof of service. Feel free to call if you have any questions.]

Regards,

Sat Sang Khalsa

From: K. Reddy [mailto:acaliforniannuance@gmail.com]
Sent: Thursday, January 05, 2012 2:10 PM
To: Sat Sang Khalsa
Cc: K. Reddy
Subject: Service of Summons and Complaint

Mr. Khalsa,

I noticed a new e-mail from you, but while I was trying to open the attachments you sent, I lost the e-mail; it got deleted. Could you please re-send it? Thank you in advance!

Looked like the e-mail was about "waiver of summons."

As you recall, you called me on 11/23/2011 about the lawsuit and regarding waiver of summons. When inquired about service on Focus Infomatics and the remaining individual defendants, you said you'd get back to me regarding that.

On 12/1/2011, in your e-mail, you said that you were looking into whether you could accept service on behalf of the remaining defendants, but you never got back to me.

On 12/12/2011, I wrote to you regarding "acknowledgment of service", and you said you'd get back to me the next day. But, you never did.

I called your office around 12/23/2011, but could not get hold of you. You never got back to me regarding any acknowledgment of service of process either.

I waited for a total of 37 days to hear from you about acknowledgment of service of process, but never received any response from you.

I was told that the summons and Complaint have been served on all the defendants on 12/30/2011.

It is my understanding that at this point, the issue of "waiver of summons" is moot.

Sincerely,

Krishna Reddy
(760) 962-9959

San Francisco * San Diego * Los Angeles * Sacramento * Orange County * Las Vegas * Portland * Seattle * Houston * Chicago * Phoenix * Dallas *
New York * Long Island * Florham Park * Denver * Miami * Atlanta * Austin * Hartford

This email communication may contain CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED and is intended only for the use of the intended recipients identified above. If you are not the intended recipient of this communication, you are hereby notified that any unauthorized review, use, dissemination, distribution, downloading, or copying of this communication is strictly prohibited. If you are not the intended recipient and have received this communication in error, please immediately notify us by reply email, delete the communication and destroy all copies.
IRS CIRCULAR 230 DISCLOSURE

To ensure compliance with requirements by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

GORDON & REES LLP
<http://www.gordonrees.com>

EXHIBIT “3”

Sat Sang Khalsa

From: Sat Sang Khalsa [skhalsa@gordonrees.com]
Sent: Friday, January 06, 2012 10:35 AM
To: K. Reddy
Cc: Joshua Wagner; SPTBC-1061948.LEGAL@worksite.gordonrees.com
Subject: RE: Service of Summons and Complaint

Dear Ms. Reddy:

I understand that you have attempted to serve the various Defendants by sending a copy of the Complaint and Summons by certified mail. Unfortunately, under both FRCP rule 4 and the applicable California law that is not a valid manner of effecting service. (See LSJ Inv. Co., Inc. v. O.L.D., Inc. (6th Cir. 1999) 167 F.3d 320, 322-323; Cal. Code. Civ. Pro. §§ 415.10, 415.20, 415.30.)

We remain agreeable to accepting a waiver of service on behalf of Defendant Nuance Communications. At your preference, you are welcome to prepare a Notice of Lawsuit and Request for Waiver of Service of Summons which we will accept on behalf of Nuance.

Also, I am still looking into whether our firm will represent the other named defendants, and will advise you once that issue is clarified.

Regards,

Sat Sang Khalsa

From: Sat Sang Khalsa [mailto:skhalsa@gordonrees.com]
Sent: Thursday, January 05, 2012 2:33 PM
To: K. Reddy
Cc: Joshua Wagner; SPTBC-1061948.LEGAL@worksite.gordonrees.com
Subject: RE: Service of Summons and Complaint

Dear Ms. Reddy:

It's a surprise that you managed to permanently delete the message, since most email programs, including gmail, have an undelete feature. Nonetheless, I will resend the email message.

As you will see from the message, there is a further step required to effect a waiver of service, which under FRCP Rule 4 is the Plaintiff's obligation. Since some time has passed since we spoke, and you had yet to send the request for waiver form. As a courtesy, and recognizing your pro se status, we provided you with the appropriate format for the request.

From the outset, I have been clear with you that our firm is presently only representing Defendant Nuance and as per FRCP Rule 4 we are willing to waive service on Nuance's behalf. I have been looking into the status of the other defendants. Also, as to your inability to reach me, as you are aware, we recently concluded a stretch of holidays. I'm sure when you called my office of December 23, you must have listened to the voice messages stating that I was out until December 27. If you had left a message or sent an email, that would have been more effective.

In any case, if you have effectuated service, I would appreciate your providing a copy of the proof of service. Feel free to call if you have any questions.

Regards,

Sat Sang Khalsa

From: K. Reddy [mailto:acaliforniannuance@gmail.com]
Sent: Thursday, January 05, 2012 2:10 PM
To: Sat Sang Khalsa
Cc: K. Reddy
Subject: Service of Summons and Complaint

Mr. Khalsa,

I noticed a new e-mail from you, but while I was trying to open the attachments you sent, I lost the e-mail; it got deleted. Could you please re-send it? Thank you in advance!

Looked like the e-mail was about "waiver of summons."

As you recall, you called me on 11/23/2011 about the lawsuit and regarding waiver of summons. When inquired about service on Focus Infomatics and the remaining individual defendants, you said you'd get back to me regarding that.

On 12/1/2011, in your e-mail, you said that you were looking into whether you could accept service on behalf of the remaining defendants, but you never got back to me.

On 12/12/2011, I wrote to you regarding "acknowledgment of service", and you said you'd get back to me the next day. But, you never did.

I called your office around 12/23/2011, but could not get hold of you. You never got back to me regarding any acknowledgment of service of process either.

I waited for a total of 37 days to hear from you about acknowledgment of service of process, but never received any response from you.

I was told that the summons and Complaint have been served on all the defendants on 12/30/2011.

It is my understanding that at this point, the issue of "waiver of summons" is moot.

Sincerely,

3/5/2012

Krishna Reddy
(760) 962-9959

San Francisco * San Diego * Los Angeles * Sacramento * Orange County * Las Vegas * Portland * Seattle * Houston * Chicago * Phoenix * Dallas *
New York * Long Island * Florham Park * Denver * Miami * Atlanta * Austin * Hartford

This email communication may contain CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED and is intended only for the use of the intended recipients identified above. If you are not the intended recipient of this communication, you are hereby notified that any unauthorized review, use, dissemination, distribution, downloading, or copying of this communication is strictly prohibited. If you are not the intended recipient and have received this communication in error, please immediately notify us by reply email; delete the communication and destroy all copies.

IRS CIRCULAR 230 DISCLOSURE

To ensure compliance with requirements by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

GORDON & REES LLP
<http://www.gordonrees.com>